

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

UNITED STATES OF AMERICA)
)
v.) Case No. 1:00-CR-49
)
TYSON L. LUNDY,)
)
Defendant)
)

OPINION AND ORDER

Before the court is counsel's "Motion to Withdraw as Court Appointed Counsel" filed on May 20, 2008. Defendant was permitted thirty (30) days to respond to counsel's motion but no response has been filed. For the following reason, the Motion to Withdraw will be GRANTED.

On February 25, 2008, the undersigned granted defendant Tyson Lundy's ("Lundy's") request for appointment of counsel for the purpose of determining whether a Motion for Reduction pursuant to 18 U.S.C. §3582(c) was appropriate in light of the retroactive amendment to the crack guidelines. On March 14, 2008, appointed counsel for Lundy submitted a Notice to the Court informing the Court that because Lundy was sentenced to a mandatory minimum sentence under U.S.S.G. §5G1.1, he is not eligible for a sentencing reduction under the amendment to the crack guidelines and therefore, a motion under 18 U.S.C. §3582(c) based upon the amendment to the crack guidelines would not be forthcoming.

Subsequently, the United States Probation Office submitted an "Addendum to the Presentence Report" which further confirms that even with the retroactive amendment Lundy is not eligible for a sentencing reduction under the 2007 crack cocaine guideline amendment because the statutorily required minimum sentence of 60 months is the required sentence by U.S.S.G. §5G1.1(b).

On May 20, 2008, the court entered an Order setting out the aforementioned facts and

providing the defendant 30 days within which to file a *pro se* motion under 18 U.S.C. §3582(c) if he disagreed with the assessment of counsel as to the applicability of the crack cocaine guideline amendment to his case. In addition, the court instructed counsel to file any motion requesting permission to withdraw from the case within 14 days. The defendant did not file a *pro se* motion within the time permitted by this court's order nor did the defendant file a response objecting to counsel's motion to withdraw. Accordingly, the Motion to Withdraw is GRANTED.

The Clerk is hereby DIRECTED to serve the Defendant a copy of this Order at his place of incarceration.

SO ORDERED. This 8th day of July, 2008.

s/ William C. Lee
United States District Court